

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

BULMARIO TORRES, ) NO. CV 10-2910-R(E)  
 )  
Petitioner, )  
 )  
v. ) ORDER OF DISMISSAL  
 )  
KEN CLARK, Warden, )  
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Respondent. )  
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Petitioner filed a "Petition for Writ of Habeas Corpus By a Person in State Custody" on April 20, 2010. The Petition seeks an order requiring the state courts to allow Petitioner to purchase transcripts of his state criminal proceedings.

Habeas corpus is a procedure through which a state prisoner may challenge the fact or duration of confinement and seek a speedier release therefrom. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). The Petition does not seek habeas relief.

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1 To the extent the Petition purports to seek relief arguably  
2 available in a civil rights action, the Court declines to exercise its  
3 discretion to construe the Petition as a civil rights complaint. See  
4 Wilwording v. Swenson, 404 U.S. 249, 251 (1971) (per curiam) (federal  
5 court has discretion to construe a mislabeled habeas petition as a  
6 civil rights complaint). In 1996 Congress enacted the Antiterrorism  
7 and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110  
8 Stat. 1214 (eff. April 24, 1996), and the Prison Litigation Reform Act  
9 of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (eff. April 26, 1996)  
10 ("PLRA"). These two statutes set forth very different procedural  
11 requirements for habeas corpus petitions and prisoner civil rights  
12 actions. See generally Naddi v. Hill, 106 F.3d 275, 276-77 (9th Cir.  
13 1997) (contrasting the two statutes; holding that in forma pauperis  
14 provisions of the PLRA relating to prisoner civil actions and appeals  
15 do not apply to habeas corpus proceedings). Habeas corpus and civil  
16 rights actions are subject to significantly different filing fees.  
17 See 28 U.S.C. § 1914(a) (\$5 for habeas petition, \$350 for civil rights  
18 complaint). Habeas corpus and civil rights actions are governed by  
19 different statutes of limitations. See 28 U.S.C. § 2244(d); Wilson v.  
20 Garcia, 471 U.S. 261, 275 (1985). The PLRA imposes limits on the  
21 number of actions a prisoner should be permitted to file in forma  
22 pauperis. See 28 U.S.C. § 1915(g). Furthermore, Respondent, a prison  
23 warden, is not the proper party defendant from whom to seek the relief  
24 sought in the Petition. For these reasons, it is not appropriate to  
25 convert this habeas action to a civil rights action. See Grinker v.  
26 Curry, 2010 WL 890381, at \*1-2 (N.D. Cal. Mar. 8, 2010) (declining to  
27 convert mislabeled habeas petition to civil rights action); Alford v.  
28 Doe, 2009 WL 3712823, at \*1 (C.D. Cal. Oct. 30, 2009) (same).

1 To the extent that the Petition seeks mandamus relief in the form  
2 of a federal court order requiring state courts or state officials to  
3 allow Petitioner to purchase transcripts as allegedly required by  
4 state law, this Court lacks authority to grant any such relief. See  
5 Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 106 (1984)  
6 (under the Eleventh Amendment, a federal district court lacks  
7 jurisdiction to order state officials to conform their conduct to  
8 state law); Demos v. United States Dist. Court for the Eastern Dist.  
9 of Washington, 925 F.2d 1160, 1161-62 (9th Cir. 1991), cert. denied,  
10 498 U.S. 1123 (1991) (petition for mandamus to compel state court to  
11 take or refrain from taking some action "frivolous as a matter of  
12 law"); Clark v. State of Washington, 366 F.2d 678, 681 (9th Cir. 1966)  
13 ("[t]he federal courts are without power to issue writs of mandamus to  
14 direct state courts or their judicial officers in the performance of  
15 their duties") (citation omitted); see also In re Campbell, 264 F.3d  
16 730, 731-32 (7th Cir. 2001) (denying petition for writ of mandamus  
17 that would order state trial court to give plaintiff access to certain  
18 trial transcripts which he sought in preparation for filing state  
19 post-conviction petition); Taylor v. Calif. Dep't of Justice, 2009 WL  
20 1814421 (N.D. Cal. June 23, 2009) (court had no authority to order  
21 California Department of Justice and local police department to  
22 provide petitioner with all evidence obtained in investigation of  
23 case).

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1 For the foregoing reasons, the Petition is denied and dismissed  
2 without prejudice.

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4 DATED: April 26, 2010.

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MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE

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12 PRESENTED this 22nd day of  
13 April, 2010, by:

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/S/  
16 CHARLES F. EICK  
UNITED STATES MAGISTRATE JUDGE